

Kogan
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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE:

B-216646

DATE: January 18, 1985

MATTER OF:

Kisco Company Inc.

DIGEST:

1. Request for second round of best and final offers is not objectionable where valid reason exists for the action.
2. Mere speculation that agency improperly disclosed price information to eventual successful offeror is rejected in the absence of evidence of a price leak. GAO does not conduct investigations to establish validity of such speculative statements.

Kisco Company, Inc., protests the award of a contract for metal boxes to Ross Bicycles, Inc., under request for proposals (RFP) No. DAAA09-84-R-0337, issued by the Army Armament, Munitions and Chemical Command, Rock Island, Illinois. Kisco contends that the agency improperly requested a second round of best and final offers based not on agency needs, but rather on the desire to give Ross an opportunity to lower its price, and thus constituted an auction. Kisco also contends that the agency, in furtherance of this auction scheme, disclosed competitive price information to Ross which resulted in the displacement of Kisco as the low offeror. We deny the protest.

The solicitation, limited to mobilization base producers, was issued on June 29, 1984. Following initial receipt of offers, the contracting officer was notified on August 9 that additional quantities of the item were required. On the following day, the contracting officer telephonically notified the offerors of this change and subsequently requested best and final offers by teletype for a quantity of 161,715 metal boxes (the initial quantity had been 76,954). The request for best and final offers contained a revised delivery schedule and an increase in the option quantity from 100 percent to 200 percent of the basic quantity. Prior to the receipt of best and final offers, the agency identified an additional

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requirement for 6,875 metal boxes. The offerors were orally advised of this second change in requirements; they indicated that they understood the revised quantity requirements.

Upon receipt of best and final offers on August 20, the protester was evaluated as low. However, sometime between August 20 and 25, representatives of Ross requested a meeting with the contracting officer which was held on August 27. During this meeting, Ross pointed out to the contracting officer that while the government had requested offers for 161,715 (plus the second supplemental quantity for 6,875 items), the sum of the individual quantities stated in the delivery schedule equaled only 135,253. Subsequently, the contracting officer on August 28 determined that the schedule was incomplete and inaccurate and, therefore, reopened negotiations by requesting a second round of best and final offers. Ross thereafter submitted the low evaluated proposal, displacing Kisco as the low offeror. This protest followed an award to Ross.

Kisco contends that since all offerors, including Ross, were orally informed of the actual quantity required, there was no rational basis for the contracting officer to request a second round of best and final offers which resulted from the meeting between Ross and the contracting officer. In support of its position that an improper auction occurred, Kisco also points to the "unusual pattern" of prices submitted by Ross during the course of the procurement:

	Initial	1st best and final	2nd best and final
Ross	\$17.95	\$18.45	\$16.99
Kisco	\$18.27	\$17.67	\$17.57

Kisco believes that the higher quantity reflected in the first round of best and final offers should have elicited a lower, rather than a higher, price from Ross. Kisco also states that the agency's failure to initially identify the actual quantity required indicates either ineptness or a "conscious effort to employ auction procedures."

It is well established that the protester has the burden of proving its case. International Alliance of Sports Officials, B-211755, Jan. 25, 1984, 84-1 CPD ¶ 117. We find no support in the record for any of the protester's allegations. The question of whether an auction has been conducted through the reopening of negotiations and the submission of new best and final offers must be determined in the light of the particular circumstances of each case. The fact that best and final offers are requested more than once by the contracting agency does not automatically establish the creation of an auction. System Development Corporation and International Business Machines, B-204672, Mar. 9, 1982, 82-1 CPD ¶ 218. Further, we have upheld agency determinations to request a second round of best and final offers when a valid reason exists for the action. Sycor, Inc., B-185566, Apr. 27, 1976, 76-1 CPD ¶ 284.

The Army denies that it either advised Ross of its competitive position or conducted the procurement in a manner which gave Ross an opportunity to lower its price. The contracting officer states that he considered it prudent to request a second round of best and final offers based on a complete and accurate delivery schedule for the full quantity, apparently because he no longer wanted to rely solely on the earlier oral notification given to offerors concerning the actual quantity requirements. In this regard, our Office has held that any oral notification of changed requirements should invariably be followed by written notification. See Informatics, Inc. et. al., 56 Comp. Gen. 388 (1977), 77-1 CPD ¶ 152. The contracting officer, by requesting offers in writing based on the total current quantity, was merely following this rule. The record thus does not support a finding that the agency requested a second round of best and final offers merely to give Ross a competitive advantage.

Kisco further suggests that the agency may have disclosed competitors' prices to Ross since that firm, in its final offer, revised its price downward just enough to displace Kisco. The agency denies that any such disclosure occurred. Nonetheless, Kisco requests that we conduct an investigation to determine whether its price was leaked. However, we do not conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative

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statements. M & H Manufacturing Co., Inc., B-191950, Aug. 18, 1978, 78-2 CPD ¶ 129. Further, the fact that the successful offeror reduces its price in a best and final offer does not establish that the protester's price has been revealed. See Nuclear Research Corporation, B-189790, Feb. 22, 1978, 78-1 CPD ¶ 147. In the absence of more probative evidence, we must view the protester's allegations as merely speculative and conclude that Kisco has not met its burden of proof.

Next, Kisco alleges, based on a synopsis in the Commerce Business Daily, that the agency improperly intends to exercise an option under the awarded contract for more than twice the quantity contained in the solicitation. The agency has advised our Office that the synopsis was the result of a clerical error and that a subsequent synopsis for the proper quantity has been published to correct the error. Further, our review of the record indicates that the exercise of the option is within the terms of the amended RFP under which the competition was conducted.

Finally, Kisco also complains that significant errors occurred in the transportation evaluation factors used to evaluate offers under the solicitation. However, since Kisco concedes that if the second round of best and final offers was proper, these errors did not materially affect the results of the evaluation, we see no reason to further consider the matter.

The protest is denied.

for *Seymour E. Fox*
Comptroller General
of the United States